

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 991

IN THE MATTER OF:

Served November 17, 1969

Order to Show Cause Directed)
Against Ira F. Gadd, d/b/a)
Columbia Sightseeing Company.)

¹²
Docket No. 193

We issued Order No. 891 on December 9, 1968, directing Ira F. Gadd, d/b/a Columbia Sightseeing Company, to show cause why his Certificate of Public Convenience and Necessity No. 16 should not be revoked. After hearing, we issued Order No. 973, dated September 11, 1969, revoking that certificate. In Order No. 982, issued October 20, 1969, we denied Gadd's application for reconsideration of the revocation. By motion filed October 23, 1969, Gadd requested the Commission to stay Orders No. 973 and No. 982 pending review of the matter by the United States Court of Appeals for the District of Columbia.

Rule 18 of the Federal Rules of Appellate Procedure states in part: "Application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency." Agencies of the federal government whose orders are reviewable in the federal courts are specifically authorized by statute to postpone the effective date of their orders, pending judicial review. Title 5 USC §705. However, the Commission is an agency of the three signatories to the Washington Metropolitan Area Transit Regulation Compact -- Maryland, Virginia and the District of Columbia -- and its authority must be found within the provisions of that Compact.

Title II, Article XII, Section 15 of the Compact, entitled Administration Powers of the Commission; Rules, Regulations and Orders, says: "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act." The power conferred in that statement is the power usually given to an administrative agency as a necessary means of carrying out its regulatory functions. We do not read it as including the special kind of authority given to federal agencies in the federal statute cited. That statute allows a federal agency to stay its action pending court review when it finds that "justice so requires."

Nor do we find that the Commission has any inherent authority to stay its orders pending judicial review. Power to issue a stay is a power grounded in equity, said to be an inherent power in courts to preserve rights until the claim to those rights can be reviewed and determined by the court. Administrative agencies are not repositories of the same inherent powers as are found in the judiciary.

Therefore, we conclude that the Commission is not empowered to stay one of its orders pending its review in the courts.

THEREFORE, IT IS ORDERED that the Motion of Ira F. Gadd, d/b/a Columbia Sightseeing Company, to Stay Orders Nos. 973 and 982 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script, reading "Melvin E. Lewis".

MELVIN E. LEWIS
Executive Director